

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT EARL WALKER,

Petitioner,

Case Number: 06-13050

v.

HONORABLE AVERN COHN

CARMEN D. PALMER,

Respondent.

ORDER

DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT
AND
AMENDING PRIOR ORDERS TO REFLECT PETITIONER'S CRIME AND SENTENCE

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner claimed that he is incarcerated in violation of his constitutional rights and raised several claims in support of his petition. The matter was referred to a magistrate judge for a report and recommendation (MJRR). The magistrate judge considered all of Petitioner's claims on the merits and recommended that the petition be denied. The Court adopted the MJRR and dismissed the case. See Order filed February 7, 2008.

Petitioner filed a motion to amend his petition on February 7, 2008 which was received by the Court on February 11, 2008. Petitioner sought to raise the issue of the use of his prior conviction in the context of a prosecutorial misconduct claim. The Court denied the motion on the grounds that, in denying habeas relief, the Court determined

the use of the prior conviction was proper. See Order filed February 13, 2008.

Petitioner then filed a motion for a certificate of appealability (COA) on the claims raised in the petition. The Court denied the motion. See Order filed March 5, 2008.

Before the Court is Petitioner's motion for relief from judgment, in which he seeks relief from the Court's orders (1) denying habeas relief, (2) denying the motion to amend, and (3) denying a COA.

II.

Petitioner seeks relief, citing Fed. R. Civ. P. 52 (b), 59, and 60. Petitioner does not argue that the Court substantively erred. Rather, he says that relief is warranted because the Court mistakenly said that Petitioner was "a state prisoner convicted of one count of involuntary manslaughter and two counts of mixing a harmful substance in a drink for which he is serving a sentence of consecutive terms of 7-15 years on the manslaughter conviction and 2½ to 5 years on the mixing a harmful substance conviction." This statement is indeed incorrect. Petitioner was convicted of bank robbery and sentenced to 6-20 years. That sentence was vacated and Petitioner was sentenced as a third habitual offender to the same term of 6-20 years. The MJRR correctly describes Petitioner's crime and sentence. The Court's misstatement, however, it is not grounds for vacating the Court's prior orders. Rather, the proper procedure is simply to amend the prior orders. Accordingly, the Orders of February 7, 2008, February 13, 2008 and March 5, 2008 are hereby AMENDED to reflect Petitioner's correct conviction (third habitual offender) and sentence (6-20 years). The Court notes that the misidentification of Petitioner's crime and sentence has no impact on its analysis or conclusions that the petition be denied, amendment is not warranted,

or that Petitioner is not entitled to a COA.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 24, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Robert Walker, 260799, Michigan Reformatory, 1342 W. Main, Ionia, MI 48846 on this date, March 24, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160